

1 THE HONORABLE BARBARA J. ROTHSTEIN
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 Wilbert Napoleon, individually and on behalf
of all others similarly situated,

10 Plaintiff,

11 v.

12 Amazon.com, Inc.,

13 Defendant.

14 Case No.: 2:24-cv-00186-BJR

**DEFENDANT AMAZON.COM, INC.’S
MOTION FOR TEMPORARY STAY**

15 **INTRODUCTION**

16 Plaintiff Wilbert Napoleon is a member of Amazon’s popular Prime subscription service,
17 which offers members a diverse bundle of benefits, such as free and expedited shipping, shopping
18 discounts, and digital content streaming. Amazon consistently and plainly discloses to Prime
19 members that those benefits are subject to change and Amazon has never guaranteed that any
20 particular benefit will remain available. Plaintiff claims that Amazon violated the Prime terms,
21 and consumer protection laws, by discontinuing a single Prime benefit, *i.e.*, an ad-free version of
22 Prime Video, Amazon’s streaming video service.

23 Plaintiff’s theory is not new. Other plaintiffs have already sued Amazon on the same core
24 theory. As Amazon laid out in its Notice of Related Case (Dkt. No. 10), this matter is related to a
25 case currently pending before the Honorable Tana Lin, *In re Amazon Service Fee Litigation*, Case
26 No. 2:22-cv-00743-TL (the “Service Fee case”). In that consolidated case, the plaintiff, Dena
27 Griffith, challenges Amazon’s discontinuance of another Prime benefit, *i.e.*, free Whole Foods

1 Market delivery. Plaintiff Griffith claims, as Plaintiff does here, that Amazon's removal of that
 2 benefit violated the Prime terms and consumer protection laws.

3 This case and the Service Fee case are filed against the same defendant, arise from
 4 substantially similar allegations and claims, seek to represent overlapping putative classes, require
 5 determinations of substantially similar questions of fact and law, and therefore are likely to involve
 6 substantial duplication of effort for the assigned judges. *See* Local Rule 3(g). As such, Amazon
 7 has filed a motion to consolidate this case with the Service Fee case. Amazon respectfully requests
 8 that the Court stay this action pending resolution of Amazon's consolidation motion. A temporary
 9 stay will not cause Plaintiff any material prejudice or harm, but will prevent the Court and the
 10 parties from engaging in efforts that might ultimately be moot if the cases are consolidated.

11 This is not a scenario where Plaintiff has been waiting years, or even months, for relief.
 12 Amazon just announced discontinuance of the ad-free Prime Video benefit in late December 2023.
 13 Plaintiff rushed to the courthouse, presumably in an attempt to be the first to file and to secure
 14 whatever tactical advantage that might entail. But Plaintiff is asserting theories and claims that
 15 are already being considered by another judge of this court, in a case that was filed and has been
 16 pending first. The most logical and efficient process is to suspend activity in this newly filed case
 17 until Amazon's motion to consolidate is resolved and it is clear whether this case will proceed
 18 independently.

19 As required by the Court's Chambers Procedures, Amazon's counsel conferred with
 20 Plaintiff Napoleon's counsel before filing this motion, but the parties were unable to resolve the
 21 issues raised in Amazon's motion.

22 BACKGROUND

23 I. The Service Fee Case

24 The related Service Fee case began as two separate actions, both challenging Amazon's
 25 implementation of a fee for Whole Foods Market ("WFM") grocery delivery, which previously
 26 had been a free service for Prime members in certain areas. After the actions were consolidated,
 27 Plaintiff Dena Griffith filed an Amended Consolidated Complaint ("CAC") on October 25, 2022.
 28 *See* Case No. 2:22-cv-00743-TL, Dkt. No. 47. In the CAC, Plaintiff Griffith sought to represent

1 two nationwide classes, and a California subclass, of Amazon Prime members. CAC ¶¶ 33-34.
 2 The CAC asserted violations of the Washington Consumer Protection Act (“WCPA”), the
 3 California Consumers Legal Remedies Act (“CLRA”), the California False Advertising Law
 4 (“FAL”), the California Unfair Competition Law (“UCL”), as well as unjust enrichment, various
 5 fraud-based claims, breach of contract, breach of the duty of good faith and fair dealing, and
 6 declaratory relief. *See id. generally.*

7 On December 16, 2022, Amazon moved to dismiss the CAC in its entirety. Dkt. No. 51.
 8 On December 7, 2023, Judge Lin granted Amazon’s motion to dismiss, dismissing certain claims
 9 with prejudice. Dkt. No. 72. The court dismissed all of Plaintiff Griffith’s California law claims
 10 under the CLRA, UCL, and FAL, without leave to amend, because Plaintiff Griffith was bound by
 11 Amazon’s Conditions of Use, which required the application of Washington law. *Id.* at 7-11. The
 12 Court also dismissed, without leave to amend, Plaintiff’s breach of contract claim because the
 13 Prime Terms—the contract that governs the Prime membership—provide that, “[f]rom time to
 14 time, Amazon may choose in its sole discretion to add or remove Prime membership benefits.” *Id.*
 15 at 15. Accordingly, the Court held that Amazon had the authority “to suspend any benefits of
 16 Prime membership.” *Id.*

17 On January 8, 2024, Plaintiff Griffith filed a First Amended Consolidated Complaint
 18 (“FACC”), asserting claims for breach of the implied covenant of good faith and fair dealing and
 19 violation of the WCPA. Dkt. No. 73. According to the FACC, Amazon falsely advertised that the
 20 Prime membership included free WFM grocery delivery and then eliminated, and began charging
 21 Prime members a fee for, that benefit. FACC ¶ 13. The FACC is focused on the alleged harm to
 22 annual Prime members who “had already paid for a one-year Amazon Prime membership” but
 23 who allegedly received no “refund or recourse” from Amazon after it terminated the benefit. *Id.*
 24 ¶¶ 23, 34. Plaintiff Griffith alleges that she was injured because “she did not receive the benefit
 25 of her purchase.” *Id.* ¶ 40. She purports to assert claims on behalf of two nationwide classes of
 26 Amazon Prime members, including those “who were charged a service fee in connection with an
 27 online delivery from [WFM] from August 1, 2021” to the present and those “who ordered
 28

1 Amazon's [WFM] free delivery and were annual members when the \$9.95 fee was introduced on
 2 October 25, 2021." *Id.* ¶ 45.

3 On February 5, 2024, Amazon moved to dismiss the FACC. *See* Dkt. No. 76. Under the
 4 current schedule, that motion will be fully briefed by March 15, 2024.

5 **II. Plaintiff Napoleon's Case**

6 This case was filed on February 9, 2024. Plaintiff challenges Amazon's right to charge a
 7 fee for a service that Amazon previously provided to Prime members for free. Plaintiff alleges
 8 that "[f]or years, Amazon advertised that its Prime subscription included ad-free streaming of
 9 movies and tv shows." Dkt. No. 1, ¶ 3. Plaintiff alleges further that, in January 2024, Amazon
 10 "unfair[ly]" "changed its terms" by "introduc[ing] ads to Prime Video" and charging "an additional
 11 \$2.99/month to get the ad-free Prime Video that [Prime members] already paid for." *Id.* ¶¶ 13, 20.
 12 Like the FACC in the Service Fee case, Plaintiff's Complaint focuses on the alleged harm to annual
 13 Prime members who "pa[id] for the annual subscription" but were allegedly "deprived of the
 14 benefit of their bargained-for exchange" when Amazon no longer provided a particular benefit for
 15 free. *Id.* ¶¶ 26-27, 43. Plaintiff asserts claims for breach of contract, breach of express warranty,
 16 quasi-contract (unjust enrichment), and violations of the WCPA, FAL, CLRA, and UCL. *See*
 17 generally *id.* And Plaintiff purports to represent a nationwide class, and a California subclass, of
 18 Amazon Prime members who "purchased an annual subscription to Amazon Prime" before
 19 December 28, 2023. *Id.* ¶ 29.

20 **III. Amazon's Consolidation Motion**

21 On March 1, 2024, Amazon filed a motion to consolidate this case with the Service Fee
 22 case. Case No. 2:22-cv-00743-TL, Dkt. No. 81. Both actions arise from Amazon's changes to
 23 benefits associated with the Amazon Prime subscription service. Both actions bring claims under
 24 consumer protection statutes and base their claims on Amazon's allegedly false and misleading
 25 advertising and alleged breach of contractual obligations. In addition, there is substantial overlap
 26 between the proposed classes, as the proposed nationwide class in this case encompasses potential
 27 class members in the Service Fee case. Because both cases are filed against the same defendant,
 28 arise from substantially similar allegations, and require determinations of substantially similar

1 questions of fact and law, they are likely to involve substantial duplication of effort for the judges
 2 assigned to the respective cases. Local Rule 3(g). There is also a risk of inconsistent rulings, as
 3 Judge Lin has already considered many of the factual allegations and legal issues central to
 4 Plaintiff's theories and claims here.

5 **LEGAL STANDARD**

6 "A district court has broad discretion to stay proceedings as an incident to its power to
 7 control its own docket." *Gov't Emps. Ins. Co. v. Gerjets*, No. 19-cv-5912-RJB, 2020 WL 1031295,
 8 *3 (W.D. Wash. Mar. 3, 2020) (citing *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir.
 9 2005); *Clinton v. Jones*, 520 U.S. 681, 706-07 (1997); *Landis v. North American Co.*, 299 U.S.
 10 248, 254 (1936)). "As part of its inherent power to control the disposition of the causes on its
 11 docket with economy of time and effort for itself, for counsel, and for litigants, [courts have] the
 12 power to stay litigation pending resolution of a related proceeding." *Amadeck v. Cap. One Fin.*
 13 *Corp.*, No. C12-0244RSL, 2012 WL 5472173, *1 (W.D. Wash. Nov. 9, 2012) (citation and internal
 14 quotations omitted).

15 "For a court to issue a stay, the parties in the two cases need not be the same and the issues
 16 need not be identical." *Owino v. CoreCivic, Inc.*, No. 17-CV-1112 JLS (NLS), 2018 WL
 17 11282678, *1 (S.D. Cal. Feb. 16, 2018) (citing *Landis*, 299 U.S. at 254). The factors that a court
 18 considers in determining whether to grant a stay are: "(1) potential prejudice to the non-moving
 19 party; (2) hardship and inequity to the moving party if the action is not stayed; and (3) the judicial
 20 resources that would be saved by avoiding duplicative litigation if the cases are in fact
 21 consolidated." *Nue LLC v. Oregon Mut. Ins. Co.*, No. C20-676RSL, 2020 WL 7016052, *1 (W.D.
 22 Wash. July 1, 2020) (internal quotation omitted).

23 **ARGUMENT**

24 The *Landis* factors support a temporary stay of this action pending resolution of Amazon's
 25 motion to consolidate this case with the Service Fee case. Plaintiff will not suffer any material
 26 prejudice because this action was just filed. But if the case is not stayed, Amazon will suffer
 27 prejudice by being forced to engage in initial discovery pursuant to the Court's scheduling order,
 28 actions which may be rendered moot if the case is subsequently consolidated with the Service Fee

1 case. A temporary stay will also conserve judicial resources and promote efficiency by preventing
 2 duplicative filings, streamlining the proceedings, and avoiding the risk of inconsistent results.

3 **I. A Temporary Stay Will Not Prejudice Plaintiff.**

4 A short stay will not prejudice Plaintiff. Amazon only requests a temporary stay of these
 5 proceedings until Amazon's motion to consolidate is resolved. *See, e.g., Nue*, 2020 WL 7016052
 6 at *1 (granting motion to stay pending motion to consolidate where court found any potential
 7 prejudice to nonmoving party would be "minimal given the short duration of the requested stay").

8 Both this case and the Service Fee case are in their early stages. The operative complaint
 9 in the Service Fee case was filed on January 8, 2024, and Amazon only just filed its motion to
 10 dismiss on February 5, 2024. Here, there has been no material activity to date and waiting a few
 11 more weeks to clarify whether this case will proceed before this Court or Judge Lin will not
 12 conceivably impair Plaintiff's rights or claims. Accordingly, this factor weighs in favor of staying
 13 the proceedings. *See, e.g., Willems v. Johnson & Johnson*, No. CV 20-00621-CJC(JCx), 2020 WL
 14 6140301, *2 (C.D. Cal. Apr. 29, 2020) (finding no meaningful prejudice from a stay because action
 15 was in its "extremely early stages").

16 **II. Amazon Will Suffer Hardship If A Stay Is Denied.**

17 Courts recognize that litigating essentially the same claims in different courts is "no doubt
 18 burdensome." *Bd. Of Tr. Teachers' Ret. Sys. Of Ill. v. WorldCom, Inc.*, 244 F. Supp 2d 900, 904
 19 (N.D. Ill. 2002); *see also Am. C.L. Union of S. California v. U.S. Dep't of Homeland Sec.*, No. CV
 20 17-02778-BRO (ASx), 2017 WL 7803788, *3 (C.D. Cal. June 21, 2017) (granting stay where
 21 defendant would suffer hardship litigating duplicative proceedings). In particular, courts recognize
 22 that it can be a meaningful hardship to simultaneously file responsive pleadings, and argue the
 23 same legal issues, in multiple courts. *Id.*

24 Absent a stay, under the Court's Order Regarding Initial Disclosures And Joint Status
 25 Report, the parties' FRCP 26(f) Conference Deadline is March 21, 2024; the Initial Disclosures
 26 deadline is March 28, 2024; and the parties owe the Court a Joint Status Report by April 4, 2024.
 27 Dkt. No. 15. If Amazon's consolidation motion is subsequently granted, all of those activities will
 28 be moot and Amazon will have expended unnecessary time, effort, and resources. If this case

1 ultimately is consolidated with the Service Fee case, the parties should proceed on the schedule
 2 established by Judge Lin.

3 **III. A Temporary Stay Will Serve the Interests of Judicial Economy and Efficiency.**

4 When determining whether to stay proceedings pending a motion to consolidate, courts
 5 place heavy weight on the concern for judicial economy and efficiency. *See Nue LLC*, 2020 WL
 6 7016052 at *1 (“Judicial economy is the ‘most important factor’ in considering whether to stay
 7 proceedings”); *see also Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1361 (C.D. Cal. 1997)
 8 (motion to stay granted where it would further the interests of judicial economy). Specifically,
 9 courts consider whether “judicial resources would be saved by avoiding duplicative litigation if
 10 the cases are in fact consolidated.” *Nue*, 2020 WL 7016052 at *1.

11 A temporary stay of this action will preserve judicial time and resources, and potentially
 12 avoid conflicting rulings. In the Service Fee case, Judge Lin has already addressed factual and
 13 legal issues that substantially overlap with Plaintiff’s allegations and claims here. Dkt. No. 72. If
 14 this case proceeds, Amazon will very likely move to dismiss Plaintiff’s complaint, on the same
 15 basic grounds Amazon has asserted in the Service Fee case. In addition to requiring the Court’s
 16 time and attention, consideration of Amazon’s dismissal motion “will be duplicative if the cases
 17 are in fact consolidated” or risk conflicting rulings. *Nue*, 2020 WL 7016052 at *1. Conversely,
 18 consolidation would simplify the proceedings, conserve party and judicial resources with respect
 19 to discovery and motion practice, and allow for uniform treatment of the related actions. *See, e.g.,*
 20 *Amadeck*, 2012 WL 5472173 at *1 (granting motion to stay where “[t]he efficiencies obtained by
 21 coordinating discovery and pretrial practices across a number of separate cases cannot be doubted:
 22 witnesses need appear and issues need be considered only once”). Accordingly, this final factor
 23 also weighs in favor of staying these proceedings pending resolution of the consolidation question.

24 **CONCLUSION**

25 Given the circumstances, there is no reason to rush to get this case moving. Plaintiff just
 26 filed the action, challenging Amazon’s conduct that occurred only a month ago, and will suffer no
 27 conceivable harm if he is required to wait a few extra weeks to proceed with his claims. On the
 28 other hand, there are risks of real burden and harm to Amazon, and a significant waste of judicial

1 resources, if this case proceeds, only to be subsequently consolidated with the Service Fee case.
2 Thus, for the reasons stated above, Amazon respectfully requests that the Court stay this case
3 pending resolution of Amazon's motion to consolidate in the Service Fee case.

4 Dated: March 6, 2024 Respectfully submitted,

5 FENWICK & WEST LLP

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7 By: /s/ Brian D. Buckley
8 Brian D. Buckley, WSBA No. 26423
9 401 Union Street
5th Floor
Seattle, WA 98101
Telephone: 206.389.4510
Facsimile: 206.389.4511
Email: bbuckley@fenwick.com

12 *Counsel for Defendant Amazon.com, Inc.*

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1 **WORD AND PAGE COUNT CERTIFICATION**

2 As required by Western District of Washington Local Civil Rule 7(e) and the Court's
3 Chambers Procedures, I certify that this memorandum contains 2,491 words and is less than 15
4 pages.

5 Dated: March 6, 2024

6 FENWICK & WEST LLP

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8 By: /s/ Brian D. Buckley
9 _____
10 Brian D. Buckley, WSBA No. 26423

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